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10/666,026	09/17/2003	Andrei V. Komkin	PERV 2777	7936

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EXAMINER	
AGARWAL, MANUJ	
ART UNIT	**PAPER NUMBER**
3764	

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/666,026	KOMKIN ET AL.	
	Examiner	Art Unit	
	Manuj Agarwal	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) ____ is/are allowed.

6)☒ Claim(s) *1-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *9/17/03* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 12/2/04
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C., first paragraph for failing to provide an adequate written description of the invention.

Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not adequately described as set forth in the above objection to the specification. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Page 4 of the specification details that the different massaging elements within a set are of different colors, but does not state that colors differ between different sets or why this is critical to the invention.

Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not adequately described as set forth in the above objection to the specification. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Page 5 states that an alternative embodiment has sets of massaging

elements that differ from other sets in respect to size. Therefore, it is implied that sets of different sizes exist and therefore the massaging elements are not of the same size.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> **The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.**

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether the massaging protrusion is equal in height to the total distance between itself and three other protrusions, or if it is equidistant to three other protrusions.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim compares the cross-sectional area of the opening of the container to its interior volume. Because the two are not equivalent scales of measurement, it is not appropriate to compare the two. The cross-sectional area of the container will always render a smaller unit of measurement than a volume measurement.

Claims 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite the limitation "diagnosing a condition." There is insufficient antecedent basis for this limitation in the claim. The diagnosis of a medical condition that warrants therapy was not disclosed in the spec. As such, only the result of a diagnosis, namely a form of treatment can be claimed.

Claim 24 fails to further limit claim 20. The protrusions were already recited as being conical.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 20,21,24-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Hseih (US 6,432,071).

Hseih teaches a generally spherical exterior and a plurality of substantially conical protrusions as can be seen in cross-section. Claim 20 recites the locations are selected from a method of inscribing a polyhedron with a plurality of polygons. The surface of Hseih's massaging element is capable of being inscribed with the method claimed. Since the claim doesn't clearly set forth how the protrusions are located relative to the inscribed method, the protrusions of Hseih could be described as being located relative to the inscribed method.

Regarding claim 21, Hseih's ball comprises hollow space 132 and active element 133, a vibrator.

Regarding claim 25 the ball is composed of two hemispheres (see fig 2) provided with mating hollow cylindrical fastening elements 12 each having interengaging latching

members 121a and 137, respectively, to provide separation of the hollow hemispheres (see fig 6).

Regarding claim 26, Hseih's massaging element is composed of two hemispheres provided with mating fastening elements 12. When the two element 12s are engaged and overlap, they will allow for relative rotation of the two hemispheres.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,3,7,11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dedyukhina in view of Anzai et al. (4,846,159).

Dedyukhina discloses a therapy apparatus comprising a container having an interior volume and having an opening providing access to said interior volume and a plurality of kidney beans, or massaging elements located in the volume of the container. A patient inserts his hand into the container through an opening, contacts the massaging elements with both the front and back of his fingers and hands, and rolls the massaging elements between his palms. In effect, the massaging elements serve to stimulate the fingers at both the front and back of the hand by contact.

Regarding claim 1, Dedyukhina lacks massaging elements that are generally spherical and have a plurality of protrusions projecting from their surface. Such massaging elements are disclosed by Anzai et al., who teaches a massage balls having

plurality of protrusions radiating from a spherical surface for facilitating muscle relief (embodiment of fig 17-22). It would have been obvious to one of ordinary skill at the time the invention was made to replace the kidney beans of the apparatus of Dedyukhina with massaging balls that have protrusions as taught by Anzai et al. in order to facilitate a more pronounced therapeutic effect.

Regarding claim 3, the balls of Anzai et al. show protrusions that are equidistant to its neighboring three protrusions. Such an arrangement would allow for a more uniform therapeutic affect at the area of contact. It would have been obvious to one of ordinary skill at the time the invention was made to provide the therapy apparatus of Dedyukhina with a massage ball having equidistant protrusions as taught by Anzai et al. in order to provide a more uniform therapeutic affect.

Regarding claim 7, the kidney bean massaging members of Dedyukhina are between 23-40mm in diameter and may be designated into sets according to any arbitrary selection criteria. It would have been obvious to replace the kidney beans with similar sized massage elements of Anzai et al. and sort them into sets based on any arbitrary selection criteria.

Regarding claim 11, the therapy apparatus of Dedyukhina has a volume of kidney beans that is 6-8 centimeters, or 2.3 to 3.1 inches high in the container. Since the average kidney bean is about an inch in diameter, it follows that there are multiple layers of beans in the therapy apparatus. Furthermore, since the massage balls of Anzai et al. are 28mm (col 2 ,line 67), or 1.1 inches, it is of a similar size. Thus it would have been obvious to replace the kidney beans with the similar sized massage

elements of Anzai et al. to form at least two layers of massaging elements in order to provide a greater number of protrusions that a user may come into contact with upon insertion of his/her hand into the container.

Regarding claim 12, the plurality of massage balls of Anzai et al. are all of the same size. It would have been obvious to one of ordinary skill at the time the invention was made to provide the therapy apparatus of Dedyukhina with massage balls of uniform size as taught by Anzai et al. to create a uniform massaging effect.

Regarding claim 13, kidney beans come in a variety of sizes. It would have been obvious to replace the kidney beans with massaging elements of Anzai et al. with a similar size disparity to provide a more randomized massaging effect.

Regarding claim 14, see rejection of claim 1.

Claim 2,5,6,15-18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dedyukhina in view of Anzai et al. as applied to claims 1,14 above, and further in view of Wu (US 5,389,063).

Regarding claim 2, Dedyukhina in view of Anzai et al. lacks massaging members of different colors. Such a feature is disclosed by Wu, who teaches a massage ball used to stimulate the vital points of the fingers (col 1 lines 35-38). This ball is has multiple colors. The ball structure 100 is provided with various color massaging elements 50 for attractiveness. It would have been obvious to one of ordinary skill at the time the invention was made to provide the massaging balls of Dedyukhina in view of Anzai et al. with multiple colors as taught by Wu in order to make the apparatus more visually appealing to the child user.

Regarding claims 5 and 6, the massaging ball of Dedyukhina in view of Anzai et al. lacks a hollow center that contains an active element, magnet 40. Such a feature is taught by fig 1 of Wu that shows a hollow center in which the active element 40 is inserted. It would have been obvious to one of ordinary skill at the time the invention was made to provide the therapy apparatus of Dedyukhina with a massage ball that is hollow and contains a magnet, as taught by Anzai et al. in order to provide the benefits magnet therapy to the user's hands.

Regarding claims 15 and 16, Dedyukhina in view of Anzai et al. lacks a second set of massaging elements. After the first set of massaging elements, namely the massage balls of Anzai et al. are removed from the container, a second set of massaging members provided by Wu is capable of being placed in the container to administer a similar finger therapy. It would have been obvious to one of ordinary skill at the time the invention was made to provide the method of therapy of Dedyukhina with a second set of massaging elements as taught by Wu in order to provide a different form of finger therapy.

Regarding claims 17 and 18, the massaging elements of Anzai et al. are of the same size and have a metallic color (col 3 lines 55-59), differing in respect to color to those of Wu, which are similar with respect to their color. The massaging element of Anzai et al. contains a core of polyamide resin and ferrite (col 3 line 54) to impart a magnetic property to the ball, and serves as an active element. The massaging element of Wu contains a magnet 40 in its center (col 3 line 16). It would have been obvious to one of ordinary skill at the time the invention was made to provide the method of

therapy of Dedyukhina with sets of massage elements that differ in respect to color to provide a more visually appealing apparatus for the child user.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dedyukhina in view of Anzai et al. as applied to claim 1 above, and further in view of Moss (2005/0263523).

Dedyukhina in view of Anzai et al. lacks an opening of the container that is of a smaller cross sectional area than the interior volume. Such a container is disclosed by Moss, and is shown of fig 1. This arrangement only allows the insertion of one of the user's hands at a time. It would have been obvious to one of ordinary skill at the time the invention was made to provide the therapy apparatus of Dedyukhina in view of Anzai et al. with the container of Moss in order to facilitate independent therapy of each hand.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dedyukhina in view of Anzai et al. as applied to claim 14 above, and further in view of Staffin et al. (US 3,760,800).

Dedyukhina in view of Anzai et al. lacks the method of placing liquid in the container with the massaging elements. Staffin et al. discloses such a method, in which a user inserts his/her hand into an open top receptacle, submerges it into a fluid substance and is subjected to massage. It would have been obvious to one of ordinary skill at the time the invention was made to provide the method of therapy of Dedyukhina with a liquid filled container to afford the benefits of hydrotherapy to the user's fingers.

Claims 21,22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hseih in view of Wu.

Hseih lacks a magnetic active element in its hollow space. Wu teaches a magnet in a similar massaging element. It would have been obvious to one of ordinary skill at the time the invention was made to replace the vibrator of Hseih with a magnet in order to provide magnetic therapy to the hands of the child user.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hseih in view of Glenman (1,947,042).

Hseih lacks an active element with the claimed properties. Glenman teaches a massage ball whose contents are heated to a desired temperature by placing the ball in hot water. The elements must therefor be able to absorb heat, and then release the heat upon application to the skin. It would have been obvious to one of ordinary skill at the time the invention was made to provide a heat-emitting or heat absorbing element as taught by Glenman in order to provide heat therapy to the hands of the child user.

Claims 27,28 rejected under 35 U.S.C. 103(a) as being unpatentable over Hseih in view of Tsuzuki (4,632,383).

Hseih lacks a massaging element that allows for relative linear movement of the two hemispheres. Such an action is taught by Tsuzuki who discloses a sphere composed of two hemispheres that are joined by elastic materials, or spring 34 which allow for relative linear movement. Spring 34 will also resist linear motion by urging the hemispheres apart as it is compressed. This movement allows for the strengthening of the grip, and will also apply therapy to the user's hands. It would have been obvious to

one of ordinary skill at the time the invention was made to provide the massaging element of Hseih with a resilient means for relative linear movement as taught by Tsuzuki to exercise the muscles of the hand and fingers.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hseih in view of Anzai et al.

Hseih lacks an electrifying material as a material of composition. Anzai teaches his massage ball to be composed of a substance that includes iron (ferrite). Iron is a well known conductor electricity. It would have been obvious to one of ordinary skill at the time the invention was made to provide the massaging element of Hseih with an electrifying material as taught by Anzai et al. in order to provide electrical therapy to the hands of the child user.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. US 5,693,004. Carlson et al. Controllable Fluid Rehabilitation Device Including a Reservoir of Fluid.

2. US 744,718. Cassidy. Massaging Appliance. A massaging element with equidistant protrusions

3. US 4,191,178. Wisnieski. Massage device. A massaging element with equidistant protrusions

4. US 6,299,585. Yoo. Finger Pressure Device. A massaging element with equidistant protrusions

5. US 2004/0006294. Zemont. Healthy Body Ball. A massaging element with equidistant protrusions.

6. US 5,413,551. Wu. Spherical Massage Device. A massaging element with equidistant protrusions.

7. US 3,411,498. Reiter. Device for Development of the Human Feeling Sense. A massaging element with equidistant protrusions.

8. US 564,258. Rossbach. Electric Massage Apparatus. A massaging element that is electrified.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuj Agarwal whose telephone number is (571) 272-4368. The examiner can normally be reached on Mon to Fri 9:00 AM 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen K. Cronin can be reached on (571) 272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Manuj Agarwal
Patent Examiner

MA

Stephen K. Cronin
Primary Examiner